IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

Miscellaneous Civil application NO. 89 OF 2006

Supriya Manas Yelve ... Applicant .
VS.
Manoj Tulshiram Yelve ... Respondent

Mr. Ashok G. Toraskar for applicant.
Mrs. Uma S.Palsuledesai for respondent.

CORAM: D. G. KARNIK **J.**

DATE: 29th September 2006

P.C.:

1. Heard learned counsel for the parties.
2. This application is made by the wife- applicant, for transfer of the marriage Petition No. A 1022 of 2006 filed by the husband – respondent pending in the Family Court, Mumbai to the court of Civil Judge, Senior Division, Ratnagiri.
3. The applicant is the wife and the respondent is the husband. According to the applicant the respondent has deserted her and is not even paying her maintenance. She has filed Misc. application No. 16 of 2006 before the JMFC., Devrukh for maintenance under section 125 of the Criminal Procedure Code. She has also made a prayer for transfer of that petition from Devrukh to Ratnagiri court for final hearing and disposal along with the marriage petition.
4. According to the applicant she resides at Kudavali,

Sangameshwar, Dist. Ratnagiri and she has no means for travelling to Mumbai for attending the hearing of the marriage petition. As the respondent is not maintaining her, she is required to stay with her parents and cannot come from Devrukh to Mumbai for hearing of the petition.

5. In Sunita Singh vs. Kumar Sanjay & Anr., reported in (2001) 10 SCC 41 the Supreme Court has held that in matrimonial proceedings the convenience of the wife shall be taken into consideration while deciding the request for transfer. Similar was the view taken in the later decision of the Supreme Court in Neelam Pathak vs. Alok Kumr Bharti, reported in (2004) 13 SCC 687.

6. Learned counsel for the respondent however referred to and relies upon a decision of the Madhya Pradesh High Court in Maya Jain vs. Sanjay Kumar Jain reported in 2000(1) HLR 716. The decision rendered by the M. P. High Court was before the Supreme Court decision. In view of the latter decision of the Supreme Court its authority is shrunken considerably. Learned counsel for the respondent also referred to and relied upon the decision rendered in Shiv Kumari Devendra Ojha vs. Ramajor Shitla Prasad Ojha and ors, reported in AIR 1997 SC 1036 wherein the Supreme Court considered the application for transfer for grant of succession certificate. In that case inconvenience of counsel was pleaded as a ground for transfer. Obviously the case is distinguishable because here the inconvenience of the applicant herself has to be considered. Counsel for the respondent also referred to the Supreme Court decision in

Mrs. Maneka Sanjay Gandhi and anr. vs. Miss Rani Jethmalani, reported in AIR 1979 SC 468. In my opinion the said decision has no application to the present case.

7. As regards the prayer for transfer of the proceedings for maintenance I do not see any reason to transfer them. The said proceedings have been filed by the applicant herself before the JMFC, Devrukh. She resides at Baudh Wadi, which is about 4 kms., from Devrukh and Ratnagiri is far away. In the circumstances I see no inconvenience for her in pursuing the application for maintenance at Devrukh.

8. For these reasons the application is partly allowed in terms of prayer clause (c) only. Marriage Petition No. No. A 1022 of 2006 pending in the Family Court, Mumbai is transferred to the court of Civil Judge, Senior Division, Ratnagiri for hearing and disposal in accordance with law.

(D.G. KARNIK J.)